

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
10-CR-122S (1)

RACHEL HALL,

Defendant.

1. On September 7, 2011, this Court imposed a sentence of 12 months and one day for Defendant's conviction for conspiring to possess with intent to distribute controlled substances. (Docket No. 48.) This was a substantial departure from the advisory guidelines range of 37 to 46 months. Defendant filed a Notice of Appeal to the United States Court of Appeals for the Second Circuit on September 19, 2011. (Docket No. 54.)

2. Presently before this Court is Defendant's Motion for Reconsideration of Sentence and for Stay of Sentence Pending Appeal. (Docket No. 58.) Defendant essentially seeks resentencing and release pending appeal based on defense counsel's alleged lack of preparation and the discovery that Defendant suffers from a medical condition. For the reasons stated below, Defendant's motion is denied.

3. First, "[a] notice of appeal 'confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'" United States v. Ransom, 866 F.2d 574, 575 (2d Cir. 1989). Because Defendant has appealed her sentence to the Second Circuit, this Court lacks jurisdiction to address her arguments for resentencing, which are based on errors she claims took place during sentencing.

4. Second, 18 U.S.C. § 3143 (b)(1) permits release of an individual who has

been found guilty of an offense, has been sentenced to a term of imprisonment, and who has filed an appeal, if the court finds that (1) clear and convincing evidence establishes that the individual is not likely to flee or pose a danger to the safety of others in the community if released, and (2) the appeal being taken is not for the purpose of delay and raises a substantial question of law or fact likely to result in reversal of the conviction, an order for a new trial, a sentence that does not include imprisonment, or a reduced sentence of imprisonment less than the total of time already served, plus the expected duration of the appeal process. 18 U.S.C. § 3143(b)(1).

5. Here, although Defendant may not be a flight risk or pose a danger to the safety of others, it appears that her appeal is taken for the purposes of delay and this Court finds that the appeal of this Court's sentence of 12 months and one day when the applicable advisory guidelines suggested a sentence of between 37 and 46 months does not raise a substantial question of law or fact that is likely to result in the imposition of a non-incarceration sentence.

6. Accordingly, Defendant's motion is denied in all respects.

IT HEREBY IS ORDERED, that Defendant's Motion for Reconsideration of Sentence and for Stay of Sentence Pending Appeal (Docket No. 58) is DENIED.

Dated: October 25, 2011
Buffalo, New York

s/William M. Skrenty

WILLIAM M. SKRETNÝ
Chief Judge
United States District Court